उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.NO. 920/05 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

SB: HON'BLE SHRI DHIRENDRA MISHRA, J.

APPELLANT (IN JAIL) Sukal, S/o Maya Ram, aged about 52 years, occupation Agricultural labour, R/o village Chirpoti, P.S. Pulgaon, Distt. Durg (CG)

VERSUS

RESPONDENT State of Chhattisgarh, through police station- Pulgaon, Distt. Durg (CG)

17-11-2007

Shri C.R. Sahu, Advocate, for the appellant.
Shri Neeraj Mehta, Panel Lawyer for the State.

2. This criminal appeal is directed against the judgment of conviction and order of sentence dated 2nd December, 2005 passed in Sessions Trial No. 226/2004 whereby learned Additional Sessions Judge, Durg has convicted the appellant under Section 376(1) of I.P.C. and sentenced him to undergo R.I. for 7 years and to pay a fine of Rs. 1000/- and in default of payment of fine, to further undergo R.I. for 6 months.

3. Case of the prosecution in brief is that the prosecutrix aged about 12 years was residing with her maternal-grand-father and maternal-grand-mother at the time of incident. On 14-9-2004, a report was lodged by the prosecutrix alleging therein that she is studying in Class 5th, habit of the accused Sukal who is her maternal-grand-father is not good. He used to do obscene act in night. In the intervening night of 6th and 7th September, 2004 when she was sleeping in her bed, Sukal took out her underwear and committed rape with her. She was profusely bleeding. She became

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आदेश पत्रक (पूर्वानुबद्ध)

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unconscious. He also threatened not to disclose about the incident to anyone or else he shall kill her by throttling, therefore, she did not disclose this incident to anyone. On return of Rajkunwar Bai, mother of her maternal-grand-mother, she stated about the incident to her who in turn narrated the incident to village Kotwar and thereafter she lodged the report of Ex. P-16. She was sent for medical examination to Government Hospital, Durg where Dr. G. Chakrawarty (P.W. 16) examined her and gave her report of Ex. P-23. Underwear of the prosecutrix and the accused and vaginal slides of the prosecutrix seized during investigation was sent for examination to FSL, Raipur and the report of the FSL is Ex. P-21. After completing investigation, charge sheet was filed.

4. During trial, the prosecution examined 16 witnesses in all and thereafter statement of the accused was recorded in which he denied the evidence available in the prosecution case against him and pleaded innocence and false implication. However the trial Court by the impugned judgment convicted and sentenced the appellant as mentioned in para 1 of the judgment.

5. Learned counsel for the appellant submits that the conviction of the appellant is based on statement of the prosecutrix P.W.14 as no other witness including Rajkunwar Bai have supported the case of the prosecution and they all have turned hostile. It was further argued that there was a domestic quarrel between the mother of the maternal-grand-mother of the prosecutrix and the accused as she used to complain that he does not do any work. They had in fact gone

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आदेश पत्रक (पूर्वानुबद्ध)

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to lodge the report about common domestic quarrel, however on the basis of the report which was lodged after more than 8 days of the alleged incident, an offence under Section 376 of I.P.C. was registered. There is no explanation for delay in lodging the report.

6. On the other hand, learned counsel for the State has supported the impugned judgment.

7. The conviction of the appellant is based on the statement of the prosecutrix. The prosecutrix has admitted in para 6 of her deposition that there was a quarrel between Ramkunwar Bai and the accused and for this account, they had gone to Kotwar with an intention to lodge report against the appellant who counseled and returned them and thereafter they proceeded for lodging report in the police station where the police obtained her signature in the blank papers. Dr. A.K. Sahu (P.W. 9) has conducted ossification test and proved the report of Ex. P-12 and Ex. P-13 and he has opined that the age of the prosecutrix at the time of examination was 15 years. He has admitted in the examination that variation of 2-3 years is possible in the age assessed on the basis of ossification test. P.W. 5 Chaitram Yadav, who is Head Master, Government Primary School, Chirpoti where the prosecutrix was studying in Class 5 has proved the birth certificate of Ex. P-6 which has been given on the basis of entry in the Admission Register of Ex. P-7 and according to which, date of birth of the prosecutrix is 10th August, 1991. He has admitted in his cross-examination that the prosecutrix was admitted in his school in Class III and her admission was made on the basis of transfer certificate in

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which the date of birth was mentioned as 10th August, 1991 and he is not in a position to state as to on what basis in the transfer certificate, the date of birth of the prosecutrix was mentioned as 10th August, 1991. Thus from the above evidence, it can be safely inferred that the age of the prosecutrix was less than 16 years at the time of incident.

8. P.W. 14, the prosecutrix has deposed that on the date of incident, she was sleeping with her maternal-grand-mother when the appellant came and forcibly slept beside her and her maternal-grand-mother went to another bed. The accused tied her hand and leg and thereafter forcibly raped her. Blood started oozing from her private part and she was drenched with blood. When she informed about the above incident to her maternal-grand-mother, she took the same very lightly and advised to forget and further threatened her that if she ever dare to tell about the incident, she would kill her. Thereafter, she narrated the incident to the mother of her maternal-grand-mother and lodged the report.

9. In cross-examination, the prosecutrix has admitted that the appellant and mother of maternal-grand-mother did not have cordial relationship and they were frequently engaged in quarrel. They had gone to the Kotwar to give information about the domestic quarrel, however he sent them back to home after advising however they went to police station for lodging report where the police personnel obtained her signature on blank papers. She has denied the suggestion of the defence that she has lodged false report against the

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आदेश पत्रक (पूर्वानुबद्ध)

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accused and has also denied that her maternal-grand-father did not do any wrong with her and she is falsely implicating her maternal-grant-father.

10. Dr. (Smt.)G. Chakrawarty (P.W. 16) has examined the prosecutrix. She has deposed that apparent age of the prosecutrix was 12 years, her secondary sexual characters were developed and there was no injury on her person. Her hymen was absent and her vagina was admitting one finger without pain. She was accustomed with the intercourse.

11. The mother of the maternal-grand-mother has been examined as P.W. 13. She has deposed that the prosecutrix had informed her that the accused Sukal was chasing her. She has also admitted that the police had recorded her statement. After declaring her hostile, she has been cross-examined and in which she has admitted the diary statement of Ex. P-15 in which she has stated that the prosecutrix was taken by her younger son-in-law, the accused for imparting her education as her father Pardeshi has died and mother has married another man. When she returned on Monday, the prosecutrix complained that the appellant forcibly raped her and when she enquired the same from the appellant, he started quarreling with her whereupon she went with the prosecutrix to lodge the report. This witness in further cross-examination by the defence has again taken summersault and has stated that the prosecutrix did not narrate anything about the incident and only stated that Sukal

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	had chased her and police did not record her statement and in fact she had gone to lodge the report about the quarrel with the appellant. 12. After scrutinizing the statement of the prosecutrix and also considering the fact that she was residing in the family of the appellant as her father is dead and mother has gone away with her second husband, the version given by the prosecutrix regarding alleged offence inspires confidence particularly looking to the statement of Rajkuwar Bai who, in fact, came to her rescue and took her to police station for lodging the report. Minor discrepancies in her statement will not render her total testimony untrustworthy or unreliable and there is no reason for her to falsely implicate her own maternal-grand-father with whom she is residing and studying. 13. In the result, the appeal preferred by the appellant is without substance and the same is dismissed. **Sd/-** **Dhirendra Mishra** **Judge**	

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